

No. 2, A.]

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#### CHAPTER 7

AN ACT to confer civil and criminal jurisdiction on the county court of Waupaca county.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Unless the context clearly indicates otherwise, as used in this act, "court" means the county court of Waupaca county; "judge" means the judge of that court; and "county" means Waupaca county. There is hereby conferred on said court, jurisdiction of the following actions, matters and proceedings:

(1) It shall have and exercise jurisdiction concurrent with and equal to the jurisdiction of the circuit court of the county in all civil actions, suits, and proceedings, either at law or in equity, of every kind and nature and in all special proceedings of every kind and nature, except in actions on contract where the debt, balance due, or damages claimed in the complaint exceeds the sum of \$500,000.

(2) It shall have and exercise jurisdiction in all paternity proceedings and in all criminal cases except treason.

(3) Subject to said exceptions, the court shall be a court of general jurisdiction, with the same power and jurisdiction as have been heretofore, are now, or may hereafter be conferred by the constitution or statutes of this state upon the circuit courts of the state.

SECTION 2. The court, within said limits, shall be a court of record, with a clerk and seal, and shall have full power and authority to issue all writs and legal process, proper and necessary to carry into effect the jurisdiction conferred by this act and the laws of this state, and to carry out such jurisdiction the court and the judge thereof shall have

and exercise all the powers now possessed, or which may hereafter be possessed by the circuit courts of this state and the judges thereof, and the same proceedings shall be had to procure such writs and process, and such writs and process shall be issued, executed and returned in the same manner and with like effect as in the circuit courts.

**SECTION 3.** (1) Appeals from judgments of police justices of the peace and justices of the peace in said county may be taken either to the circuit court or county court of the county at the option of the appellant in civil actions or of the defendant in criminal actions, and if taken to the county court, such appeal shall be tried and determined in the same manner as is by law required in the circuit court, and all laws providing for taking appeals in civil and criminal actions from justices of the peace or justice courts of the county shall be construed to apply equally to such appeals when taken to the county court.

(2) All appeals and examinations, recognizances and commitments from or by any examining magistrate of the county in paternity proceedings (sections 52.21 to 52.45 of the statutes) and in all criminal actions within the jurisdiction of this court, may hereafter be certified and returned within the time prescribed by law either to the circuit court or the county court of the county, at the option of the defendant, within the time prescribed by law, and the attendance of witnesses upon the trial of any person so committed shall be procured in the same manner as provided by law in the circuit court, and the court has power to appoint an attorney to defend a person charged with an offense in the same manner and upon the same conditions as the circuit court may appoint an attorney to defend a person charged with an offense.

**SECTION 4.** Every issue of law in any civil action or proceeding, and every issue of fact in an action heretofore cognizable in a court of equity shall be tried by the court, but the court may order such issue of fact tried by a jury; every civil action properly triable by a jury, and not heretofore cognizable in a court of equity, shall on demand of either party, as herein provided, be tried by a jury of 12 persons, unless a less number is agreed upon by the parties, and if no jury be demanded by either party, shall be tried by the court. Every criminal action shall be tried in the same manner as in circuit court.

**SECTION 5.** All judgments, orders and decrees made and entered in and by the court, shall have the same force, effect, and lien and be executed and carried into effect and enforced in the same manner as judgments, orders and decrees made and entered in the circuit court, and all remedies given and proceedings provided for the collection and enforcement of the judgments, orders and decrees of the circuit court, shall apply to and be exercised by and pertain to the county court. Actions for the foreclosure of liens, wherein the claim for lien has been filed in the office of the clerk of the circuit court, may be brought, heard and determined in and by the county court, in the same manner and with like effect as if brought in the circuit court.

**SECTION 6.** All orders and judgments of the court may be reviewed by the supreme court, in the same manner and with like effect as judgments and orders of the circuit court; and the supreme court has the same power and jurisdiction over such actions, proceedings, orders and judgments as it has over actions, proceedings, orders and judgments in the circuit court of the county, and the parties have the same right to writs of error and appeal from said court to the supreme court of this state as it now or may hereafter be allowed by law from circuit courts of this state, and may demand and shall be entitled to receive from the judge a bill of exceptions and have the same settled in the same manner

and under the same restrictions as in the circuit court and the same shall be heard and settled within the same time as is now required or may hereafter be required in the circuit court by the law or rules and practice of the circuit court or of the county court relative thereto.

SECTION 7. The rules of court shall be the same as the rules of the circuit court of the county except as modified by the county judge. The judge has the power to make all such rules for conducting the judicial business of the court as he deems advisable for the due administration of justice.

SECTION 8. There shall be held at the county seat of the county 2 general terms, one to begin on the second Wednesday of September, and the other on the second Wednesday of March. Each term shall continue up to the first day of the succeeding term. Any trial, hearing or argument or assessment which has been commenced during any term but has not been concluded before the commencement of any subsequent term, shall be continued and proceeded with at any subsequent term in the same manner and with like effect as though it had been commenced at such subsequent term.

SECTION 9. Within the jurisdiction of the court, judgment may be had and entered in vacation, if the defendant fails to answer the complaint, in the same manner and in like cases wherein judgment may now be had and entered in the circuit court in vacation, and the clerk of the court has the same powers and authority relative thereto as he has by law or otherwise in circuit court.

SECTION 10. If the judge is unable to attend and hold any general or special term of the court on the day appointed, he may by order adjourn the term to a day certain. Any circuit judge or judge of a county court having civil and criminal jurisdiction may upon the request of the judge of this court, hold court and while so doing he has the power and authority of the county judge of Waupaca county. If no such order or request is made, the court shall stand adjourned for the term and all cases continued to the next term of court.

SECTION 11. The provisions of law applicable to change of venue in the circuit courts of this state shall be applicable to the county court. When the venue of any action is changed pursuant to section 261.04 of the statutes it shall be changed to the circuit court of the proper county; and such change of venue shall not prevent the granting by that circuit court of a further change of venue as provided in section 261.04 or 261.08 of the statutes. When the venue of any action is changed by the county court pursuant to section 261.08 or 956.03 of the statutes it shall be changed to the circuit court of Waupaca county, or the judge of the county court may call upon the circuit judge of the circuit court of Waupaca county or upon the county judge of any county court having civil and criminal jurisdiction to attend, hold court and try the action and while so doing he has the powers and authority of the judge of the county court of Waupaca county. If any person charged upon indictment or information with a criminal offense has procured a change of venue to the circuit court of Waupaca county, the county court shall commit or hold the party to bail to appear at the next term of the circuit court and the clerk of the county court shall transmit all papers and a copy of the records and proceedings in the case, properly certified to be such under the seal of the court, to the circuit court which then has full jurisdiction of the action; all recognizances previously given in such cases and returned to the county court may be enforced in said circuit court as fully as if they had been originally returned thereto. In like manner

may all such cases which might originally have been brought in the county court or appealed hereto, where a change of venue is allowed or directed by the circuit court on the grounds of prejudice of the judge thereof, be removed to the county court; provided that nothing herein contained shall be construed as abrogating the power conferred upon the circuit court by section 261.08 of the statutes.

SECTION 12. The judge shall be disqualified to try and determine any case in which he has acted as counsel for either party, and he shall transmit all such cases to the circuit court of the county; the judge may transmit to the circuit court any other action or proceeding before him, if in his discretion he deems it expedient; and the circuit court shall thereupon proceed to try and determine the same in the same manner as if the action or proceeding had originated in the circuit court. The judge of that circuit court may transmit to the county court any action or proceeding, pending in the circuit court, which might originally have been commenced in said county court, if in his discretion he deems it expedient, and the county court shall thereupon proceed to try and determine the same in the same manner as if the action or proceeding had originated in the county court.

SECTION 13. The judge while holding such office shall be in no manner engaged nor act as attorney or counsel in any action, cause or proceeding in or which might be brought in either the circuit or county court of the county nor give advice or opinion therein; and the judge shall not give advice to parties litigant in any action or proceeding pending before such judge nor in any matter which might be brought before him for decision, nor draft or prepare any papers or other proceedings relating to any such matter or action, except when expressly authorized by law, upon penalty for any violation hereof of removal from office.

SECTION 14. (1) Whenever it appears to the satisfaction of the judge that a jury panel should be drawn for any term of the court, he may by order direct the clerk, at a time to be named in such order not less than 6 days before such term, to draw from the list of persons provided for jury service in the circuit court of the county, in the presence of the judge, 24 jurors for the term. If the name of any person known to the clerk or judge to be disqualified or no longer liable to jury duty in the county is drawn, such name shall be thrown out and the name of another juror drawn and the list of jurors so selected shall forthwith be filed in the office of said clerk. No jurors shall be summoned to attend upon any term unless it appears to the satisfaction of the judge that a jury panel is necessary. All laws and rules of practice relating to the selection, qualifications, duties and compensation of jurors in the circuit court shall be applicable to the county court, except as otherwise provided herein.

(2) The panel of jurors selected for any term of the circuit court branch of said county court under its civil or criminal jurisdiction shall constitute the panel of jurors for all succeeding terms of court until discharged by the court; but the judge of said court, in his discretion, may order a new panel of jurors to be drawn for the subsequent or any succeeding term.

SECTION 15. The court may set down any case, civil or criminal, on the calendar for trial on any particular day; and after issue joined in any civil action or proceeding, or after information filed in any criminal action pending in said court, any party may, upon 5 days notice to the other party or parties, and without any notice of trial having been previously served, apply to the court or judge thereof to set down such case for trial on a particular day, and the court or judge shall, upon the hearing of such application, if it is reasonably possible, fix a definite

time for such trial, which shall be not less than 14 days nor more than 30 days from the time of the hearing of such application, unless for cause the court or judge otherwise orders. At the time any action or proceeding is so set down for trial, if it is one triable by a jury, the court shall require the parties to determine and elect whether they wish a trial by jury, and if a jury is elected of what number, and if a trial by jury is demanded by either party to the action, the court shall, unless otherwise agreed upon by the parties, issue a venire for the 24 jurors drawn for service under SECTION 14, returnable at the time fixed for the trial of the action; but the issues of fact joined upon any complaint, indictment or information may be tried by the court without a jury or by a jury of less than 12 men whenever the accused in writing or by statement in open court entered in the minutes consents thereto. In all other respects a jury shall be selected in the same manner as in the circuit court.

SECTION 16. If a jury is required to make an assessment of damages in any case, the same shall be selected from the panel of jurors selected for the term, or the court may direct the same to be had and taken by any jury summoned in any other case or may direct the clerk to summon a special jury for that purpose to be composed of persons qualified to serve as jurors in said court, and unless objections are made, such assessment of damages may be made by the court or judge thereof, without the intervention of a jury.

SECTION 17. The parties in any case, civil or criminal wherein a jury trial may be had, may agree upon a trial thereof by any number of jurors less than 12.

SECTION 18. All costs, fees, and disbursements shall be taxed and allowed the prevailing party in the same manner and to like amount as they are taxed and allowed in the circuit court.

SECTION 19. In addition to his other compensation as judge, there shall be paid him annually \$1,500 for performing the duties of juvenile judge and \$2,000 for performing all the other duties under this act, the payments to be made out of the county treasury in 12 equal instalments. Nothing herein is intended to affect the powers of the county board of supervisors of the county from changing the judge's salary in accordance with law.

SECTION 20. The clerk of the circuit court of the county shall ex officio be the clerk of the county court and shall have the care and custody of all books and papers belonging to the county court except those that appertain to the probate jurisdiction thereof and shall perform the duties of the clerk of the county court, so far as it is requisite and necessary to discharge the necessary duties as clerk of the county court, and all other duties necessary to carry this act into effect; and the clerk of the county court shall keep all necessary records of proceedings and judgments had in the county court, in the manner provided in the circuit court except as otherwise provided in this act. All orders, judgments, and decrees made and entered in this court shall be recorded and judgments and decrees docketed by the clerk in the same manner and in the same books that orders, judgments and decrees of the circuit court for the county are recorded and docketed, and with like effect. Notation shall be added in such dockets and records showing that such orders, judgments or decrees were made in the county court. In each civil action commenced in or appealed to the county court, there shall be paid a state suit tax and advance clerk's fee at the same time and in the same manner and amount as provided for the payment of state suit tax and advance clerk's fees for actions commenced in or appealed to the circuit court.

SECTION 21. The deputy clerks authorized by law to be appointed by the clerk of the circuit court of the county shall also be the deputy clerks of the county court and may aid the clerk in the discharge of his duties as clerk of the county court, and in the absence of the clerk from his office or from the court may perform all his duties and in case of a vacancy by resignation, death, removal or other cause, the deputy appointed shall perform all such duties as clerk of the county court until the vacancy be filled.

SECTION 22. The judge may appoint one or more bailiffs who shall attend such court when so required by the court, which appointments shall be revokable by the judge at his pleasure. Such officers shall be entitled to receive the same compensation payable in like manner as is, or may be provided by law for like services in the circuit court of the county.

SECTION 23. The fees of the clerk, witnesses, jurors and officers shall be the same as are allowed by law to the clerk, witnesses, jurors and officers in the circuit court of the county.

SECTION 24. The judge may employ a phonographic reporter for the court, who shall take and subscribe the oath of office provided in the constitution. Such phonographic reporter shall be furnished with all necessary stationery, and shall attend when required by the judge and report the proceedings of trials (and other proceedings when required by the judge) had in the court, and perform such other duties as the judge requires. The judge shall fix the compensation of such reporter at not to exceed \$10 for each day, and \$5 for each one-half day attendance, which shall be full compensation for services and for making transcripts from his notes as may be required by the judge; but in lieu of such salary, the county board of the county, in its discretion, from time to time, fix the salary of the phonographic reporter, which salary shall be paid at the end of each month. Such reporter shall furnish parties to the action or their attorneys requiring them, like transcripts and carbon copies thereof, and be paid therefor the same rate as provided for the circuit court reporter for the county. The fee for such transcripts shall belong to the phonographic reporter.

SECTION 25. Court commissioners for the circuit court of the county shall have the same powers and be subject to the same duties in respect to actions and proceedings in the county court as in actions and proceedings in the circuit court.

SECTION 26. The seal of the county court shall continue to be used as the seal of this court.

SECTION 27. The county shall provide all books, blanks and stationery for keeping the records and proceedings of the county court under this act. The county court of said county shall be held in the county courtroom or may be held in the circuit courtroom when the circuit court is not in session, at the county seat of the county, except as herein provided; and all books, records and proceedings pertaining to the county court shall be kept, except as provided in SECTION 20, in the office of the clerk of the county court or in the office of the county judge.

SECTION 28. All process and pleadings and documents shall be entitled "County Court of Waupaca County—Circuit Court Branch."

SECTION 29. The divorce counsel appointed by the circuit court of the county shall also be the divorce counsel for the county court.

SECTION 30. All fines and costs collected by the clerk in any civil action and in all criminal prosecutions and proceedings under the general statutes of this state tried or determined by the county court, which if tried or determined by the circuit court or circuit judge would be paid over to the county treasurer, shall be accounted for and paid over quarterly by the clerk of the county court to the county treasurer of the county.

SECTION 31. The general provisions of the statutes, and all the general laws which may at any time be in force relative to circuit courts and actions and proceedings therein, in civil and criminal cases, shall also apply to the county court, unless inapplicable, and except as otherwise provided in this act; and the rules of practice prescribed by the justices of the supreme court for circuit courts shall, unless inapplicable, be in force for the county court, and the judge of the county court has the power to punish for contempt in the same manner that the judges of circuit court are or may be authorized by law to punish for contempts; and the county court has the power to make and enforce such other rules of practice as may be necessary.

SECTION 32. This act shall be effective on the first day of the month following its passage and publication.

Approved March 20, 1959.

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